

IN THE UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF COLORADO

GUIDELINES FOR THE APPOINTMENT OF ATTORNEYS
PURSUANT TO THE CRIMINAL JUSTICE ACT
18 U.S.C. 3006 A(b)
AS AMENDED BY ORDER OF MAY 30, 1996

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

CONTENTS

	<u>Page</u>
Introduction	3
I. Composition of Panels of Private Attorneys	3
A. Panels	
1. CJA Panels	3
a. Approval	3
b. Size	3
2. Habeas Corpus Panel	3
3. Death Penalty Panel	3
B. Eligibility	4
C. Special Appointments	4
D. Term	4
E. Applications	4
II. Standing Committee on the Criminal Justice Act	4
A. Membership	3
B. Duties	4
III. Appointments	5
A. Maintenance of Lists	5
B. Method of Selection	6
IV. Payment of Representation	6
A. Filing of Claims	6
B. Requirements	6
C. Waiving Case Compensation Maximums	7
D. Compliance with Guidelines	8
E. Disallowance	8
F. Compensation in Death Penalty Cases	8
V. Removal from the Panels	8

Pursuant to the Guidelines for the Administration of the Criminal Justice Act approved by the Judicial Conference of the United States, the United States District Court for the District of Colorado has established the following plan for the appointment of counsel pursuant to 18 U.S.C. § 3006A(b):

I. COMPOSITION OF PANELS OF PRIVATE ATTORNEYS

A. PANELS

1. CJA PANEL

a. APPROVAL

The Court has established a panel of private attorneys (hereinafter the CJA Panel) who are eligible and willing to accept appointments to represent persons for whom representation is to be provided under 18 U.S.C. § 3006A(a). CJA Panel lawyers will be appointed to represent persons in all such cases and matters by a judicial officer. All Criminal Justice Act appointments shall be made pursuant to this plan. The Court shall approve attorneys for membership on the CJA Panel after receiving recommendations from the CJA Panel Committee, established pursuant to paragraph II(A) of this Plan.

b. SIZE

The CJA Panel shall consist of 100 lawyers.

2. HABEAS CORPUS PANEL

The Court has established a panel of private attorneys, a Habeas Corpus Panel, who are eligible and willing to accept appointments to represent persons for whom representation is to be provided on habeas corpus cases. Lawyers will be appointed to represent persons in such cases and matters by a judicial officer. The Court shall approve attorneys for membership on the Habeas Corpus Panel after receiving recommendations from the CJA Standing Committee.

3. DEATH PENALTY PANEL

The Court has established a panel of private attorneys, referred to as the Death Penalty Panel, who are eligible and willing to accept appointments to represent persons for whom representation is to be provided on cases for which the death penalty is an authorized punishment. Lawyers will be appointed to represent persons in all such cases and matters by a judicial officer. The Court shall approve attorneys for

membership on the Death Penalty Panel after receiving recommendations from the CJA Standing Committee.

B. ELIGIBILITY

To be eligible for service on a panel, lawyers must be members of the bar of this court who certify that they have a working knowledge of the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, and the United States Sentencing Commission Guidelines Manual, and are competent to try a federal criminal case. Such certification of competency shall be made under Disciplinary Rule 6-101 of the Code of Professional Responsibility.

C. SPECIAL APPOINTMENTS

When the judicial officer presiding over a criminal case determines that justice, judicial economy, continuity of representation, or some other compelling circumstance requires the appointment of a lawyer who is not a member of a panel, the judicial officer may make the appointment by an order, stating the reason, and admitting the appointed lawyer, pro hac vice. Consideration for preserving the integrity of the panel selection process requires that such appointments should be made only in exceptional circumstances.

D. TERM

There are no fixed terms for panel membership. Lawyers will remain on the panels until they resign or are removed according to the procedure established in Section V.

E. APPLICATIONS

Applications for membership on the panels will be available in the office of the Clerk of the Court. Applicants shall describe their background, training, interests, and experience on the application prescribed by the CJA Committee. Completed applications will be submitted to the Clerk for transmittal to the Standing Committee on the Criminal Justice Act.

II. **STANDING COMMITTEE ON THE CRIMINAL JUSTICE ACT**

A. MEMBERSHIP

The Court has appointed seven lawyers to serve on a Standing Committee on the Criminal Justice Act (the CJA Committee). The Federal Public Defender is a permanent member of the CJA Committee. Members shall serve for a term of three years and may be re-appointed for one additional term of three years.

B. DUTIES

The CJA Committee shall review the qualifications of applicants, conduct such further inquiries as may be indicated and recommend lawyers for placement on the three panels. The CJA Committee shall also review the operation and administration of the panels annually and recommend any changes deemed necessary or appropriate. The Committee shall also inquire annually as to the continued availability and willingness of each panel member to accept appointments.

The CJA Committee will recommend the appointment of lawyers found to be best qualified, taking due account of the geographic distribution of cases. The recommendations of the CJA Committee shall contain the following endorsements:

1. The identity of the proposed panel lawyer;
2. A brief description of the background, experience, and interests of the proposed panel lawyer;
3. A recommendation that the proposed panel lawyer be considered for appointment to represent defendants in routine, complex, or extended cases or, in habeas corpus or death penalty cases based on experience, interest, availability, and skill.

The composition of the three panels shall be public information. The CJA Committee's recommendations and other communications to the Court shall be confidential, except that, upon request, that applicant shall be provided with the Committee's recommendation concerning the applicant.

The Committee shall also investigate complaints made against a panel member and may recommend removal in a confidential written communication to the Chief Judge.

III. APPOINTMENTS

A. MAINTENANCE OF LISTS

The Clerk of the Court shall maintain a public, current list of the members of the CJA Panel, the Habeas Corpus Panel and the Death Penalty Panel, with current office addresses and telephone numbers. The Clerk shall also maintain a public record of appointments of private lawyers and, when appropriate, statistical data reflecting the probation of appointments between lawyers from the Federal Public Defender Office and private lawyers.

B. METHOD OF SELECTION

The objective of this plan is to ensure competent and effective representation of each person to whom legal services are provided. While the Court's policy is to make appointments from the panels primarily on a rotating basis, the appointing judicial officer must evaluate the nature and complexity of the matter or case, the experience of the lawyers on the lists, geographical locations and availability, and any special circumstances in making the appointment.

IV. PAYMENT FOR REPRESENTATION

A. FILING OF CLAIMS

Claims for compensation shall be submitted, on the appropriate CJA form, to the office of the Clerk of the Court. The Clerk of the Court shall review the claim form for mathematical and technical accuracy, and for conformity with the Guidelines for the Administration of the Criminal Justice Act (Volume VII, Guide to Judiciary Policies and Procedures) and, if correct, shall forward the claim form for the consideration and action of the presiding judicial officer. The CJA Committee shall be authorized to periodically review compensation levels, conduct appropriate inquiry (including surveys) and report to the Court and other appropriate authorities on matters concerning CJA lawyer compensation.

B. REQUIREMENTS

Each claim shall be supported by a sworn written statement specifying the time expended, services rendered, and expenses incurred. Where representation was furnished exclusively before a United States Magistrate Judge, the claim shall be submitted by the Clerk to that judicial officer, who shall fix the

compensation and reimbursement to be paid. In all other cases, the claim shall be submitted by the Clerk to the appropriate district judge to fix the compensation and reimbursement to be paid. The presiding judicial officer may direct the claimant to file additional information.

C. WAIVING CASE COMPENSATION MAXIMUMS

Payments in excess of CJA compensation maximums may be made to provide fair compensation in cases involving extended or complex representation when so certified by the presiding judicial officer and approved by the Chief Judge of the Circuit (or by an active circuit judge to whom excess compensation approval authority has been delegated).

In determining if an excess payment is warranted, the presiding judicial officer should make a threshold determination as to whether the case is either extended or complex. If the legal or factual issues in a case are unusual, thus requiring the expenditure of more time, skill and effort by the lawyer than would normally be required in an average case, the case is "complex". If more time is reasonably required for total processing than the average case, including pre-trial and post-trial hearings, the case is "extended".

After establishing that a case is extended or complex, the presiding judicial officer should determine if excess payment is necessary to provide fair compensation. The following criteria, among others, may be useful in this regard: responsibilities involved measured by the magnitude and importance of the case; manner in which duties were performed; knowledge, skill, efficiency, professionalism, and judgment required of and used by counsel; nature of counsel's practice and injury thereto; any extraordinary pressure of time or other factors under which services were rendered; and any other circumstances relevant and material to a determination of a fair and reasonable fee.

In any case in which the total compensation claimed is in excess of the statutory case compensation maximum, counsel shall submit with the voucher a detailed memorandum supporting and justifying counsel's claim that the representation given was in an extended or complex case, and that the excess payment is necessary to provide fair compensation. Upon preliminary approval of such claim by the presiding judicial officer, the Court shall furnish to the Chief Judge of the Circuit (or to an active circuit judge

to whom excess compensation approval authority has been delegated) a memorandum containing a recommendation and a detailed statement of reasons.

D. COMPLIANCE WITH GUIDELINES

All members of the panels will be given copies of the *Guidelines for the Administration of the Criminal Justice Act* published by the Administrative Office of the United States Courts and will comply with their requirements.

E. DISALLOWANCE

Before any claim is disallowed, in whole or in part, the presiding judicial officer shall issue a written order specifying the reasons for such disallowance and giving the claimant twenty days to show cause in writing why such disallowance should not be made.

F. COMPENSATION IN DEATH PENALTY CASES

In death penalty cases, compensation for legal services, investigative, expert or other services will be considered under 21 U.S.C. § 848(q) and guidelines applicable to such cases.

V. REMOVAL FROM THE PANELS

Membership on the panels is not a property right. Panel lawyers must recognize that membership requires a substantial commitment to professional service in the public interest. A refusal to accept appointment on three occasions within one year shall constitute grounds for removal from the panels. Any attorney so removed may reapply for panel membership by submitting a new application, together with an explanation of the circumstances of the refusal to accept appointments.

The Court recognizes the need to preserve professional independence and zealous representation. Accordingly, no lawyer will be involuntarily removed from the panels except upon the recommendation of the CJA Committee, unless at least three active judges of the Court concur in a removal decision for reasons given to the removed lawyer in a confidential written communication from the Chief Judge.